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FIRST GENERAL COUNSEL'S REPORT

MUR: 6556
DATE COMPLAINT FILED: April 12, 2012
DATE OF NOTIFICATION: April 26, 2012
LAST RESPONSE RECEIVED: June 12, 2012
DATE ACTIVATED: June 21, 2012

EXPIRATION OF SOL:
EARLIEST: July 5, 2012
LATEST: May 28, 2015

COMPLAINANT: Melanie Sloan, Executive Director
Citizens for Responsibility and Ethics in Washington
("CREW")

RESPONDENTS: Paul Broun
Paul Broun Committee and Paul Kilgore in his official
capacity as treasurer¹

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 434(b)
11 C.F.R. § 104.3(d)(4)
11 C.F.R. § 104.9(f)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Citizens for Responsibility and Ethics in Washington ("CREW") filed a complaint
alleging that Representative Paul Broun and his authorized committee, the Paul Broun

¹ Tim Echols served as the treasurer of the Paul Broun Committee from 2007 to 2008, when the original loans at issue were made to the Committee. On January 8, 2009, the Committee filed an amended Statement of Organization identifying Paul Kilgore as the treasurer of the Paul Broun Committee. On February 13, 2013, Broun filed a Statement of Candidacy for the 2014 Senate race in Georgia, designating the Paul Broun Committee as his principal campaign committee. On April 26, 2013, the Committee filed a new Statement of Organization listing Paul Kilgore as treasurer.

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1 Committee and Paul Kilgore in his official capacity as treasurer (the "Committee"), violated the
2 Federal Election Campaign Act of 1971, as amended (the "Act"), by misreporting the source of
3 \$304,000 in loans Broun made to his campaign in 2007 and 2008 as personal funds rather than
4 bank loans. Compl. ¶¶ 13-14 (Apr. 12, 2012). Respondents do not dispute that the Committee
5 misreported the source of three loans in 2007 but argue that the failure was "inadvertent," could
6 be "cured through submission of amended reports," and request dismissal. Resp. at 1-2 (June 12,
7 2012). Shortly thereafter, on June 26, 2012, the Committee filed amended disclosure reports
8 identifying the source of some of these funds as home equity loans and related disbursements.

9 We conclude that the Committee misreported two loans totaling \$114,000 by reporting
10 the source of the funds as personal funds rather than as bank loans. In addition, the Committee
11 failed to report the receipt of a third bank loan in the amount of \$65,000. See Resp. at 2, n.1.
12 The Office of General Counsel recommends, however, that the Commission dismiss the
13 allegations that the Committee violated the Act by failing to accurately report the loans and
14 related disbursements in the relevant disclosure reports. Although some of the misreporting is
15 still within the statute of limitations, the original activity that gave rise to the reporting violations
16 is now outside the five-year statute of limitations period, the Committee has substantially
17 corrected the record, and there are no other violations at issue in this matter. Nevertheless, we
18 recommend the Commission caution the Committee regarding the Act's loan reporting
19 requirements. Further, because Paul Broun has no personal liability for the reporting violations,
20 we recommend that the Commission find no reason to believe that Paul Broun violated the Act.

21 II. FACTS

22 In 2012, CREW released a report, entitled *Family Affair* ("CREW Report"), which
23 claimed that the Committee paid Broun interest on personal loans he made to the Committee,

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1 despite reporting that he “would not charge interest.” Compl., Ex. C. In its report, CREW
2 identified \$28,756 in disbursements for interest payments to Representative Broun.² Compl.
3 ¶11; *id.*, Ex. C. According to the Complaint, in response to the CREW Report, Broun told a
4 newspaper on March 22, 2012, that “the interest his campaign paid on the loans went to the bank
5 he borrowed the money from.” Compl. ¶ 12; *id.*, Ex. D.

6 Based on Broun’s reported statement, the Complaint alleges that the Committee violated
7 11 C.F.R. § 104.3(d)(4) by failing to disclose the true source of five loans totaling \$304,000 that
8 Broun made to his Committee in 2007 and 2008 and reported as funded from personal funds
9 including: (1) \$80,000 on March 26, 2007; (2) \$10,000 on May 24, 2007; (3) \$34,000 on June 6,
10 2007; (4) \$80,000 on July 9, 2007; and (5) \$100,000 on April 14, 2008.³ Compl. ¶¶ 8-10, 13-14;
11 *id.* at Exs. A-B. The Complaint states that “[a]t no time since the Paul Broun Committee was
12 established has the Committee filed a Schedule C-1 disclosing the true source” of the loans.
13 Compl. ¶ 10.

² The CREW Report, which is attached to the Complaint, cites to five of the Committee’s disclosure reports in support of its \$28,756 calculation. See Compl., Ex. C at n.6. Two of the cited reports however, do not include any itemized interest payments to Broun. See 2009 Year-End Report (filed Jan. 29, 2010) (disclosing no interest payments to Broun); 2010 April Quarterly Report at 273, 277 (filed Apr. 14, 2010) (disclosing \$5,809.14 in interest payments); 2010 Pre-Primary Report at 241-242 (filed Jul. 8, 2010) (disclosing \$18,647.91 in interest payments); 2010 October Quarterly Report (filed Oct. 13, 2010) (disclosing no interest payments to Broun); 2010 Year-End Report at 18 (filed Jan. 31, 2011) (disclosing \$4,298.75 in interest payments). The total amount of interest paid to Broun disclosed in these reports is \$28,755.80. However, the Committee also disclosed interest payments on its 2011 July Quarterly Report, for a total amount of \$30,201.46 in loan interest payments to Broun. See 2011 July Quarterly Report at 98 (filed Jul. 15, 2011) (disclosing \$1,445.66 in interest payments). In addition, the Committee reported \$2,692.21 as a debt to Broun for “finance charges” on its Schedule Ds filed for the 2008 Year-End Report and 2009 disclosure reports. See 2008 Year-End Report at 50 (filed Jan. 31, 2009); 2009 April Quarterly Report at 170 (filed Apr. 15, 2009); 2009 July Quarterly Report at 272 (filed Jul. 15, 2009); 2009 October Quarterly at 247, 283 (filed Oct. 14, 2009) (reported as a debt (Schedule D) and repayment (Schedule B)); see also the 2009 Year-End Report listing three debts totaling \$23,722.95 for “loan interest” to Broun. See 2009 Year-End Report at 244, 245 (filed Apr. 6, 2010).

³ The CREW Report mentions six loans totaling \$309,000 during the 2008 election cycle, but the allegations in the Complaint discuss only five loans, which total \$304,000. The Committee also disclosed that Broun made an additional \$5,000 loan to his Committee on January 1, 2007, from his personal funds.

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1 In their joint Response, Respondents concede that the true source of three of these loans,
2 totaling \$179,000, was not Broun's personal funds but rather a home equity line of credit
3 ("HELOC") Broun obtained from Athens First Bank & Trust. Resp. at 2. Specifically, after
4 loaning the Committee a total of \$95,000 from his personal funds from January to May 2007
5 (\$5,000 in January 2007, \$80,000 in March 2007, and \$10,000 in May 2007), Broun obtained a
6 HELOC on his personal residence.⁴ On June 4, 2007, Broun withdrew an initial amount of
7 \$65,000 from that line of credit and used the funds to repay himself \$65,000 of the \$80,000
8 personal loan he made to the Committee in March 2007. The Committee did not report the
9 receipt of the \$65,000 loan from HELOC or the simultaneous repayment of the \$65,000 to
10 Broun. Resp. at 2 n.1. The Respondents also concede that Broun made two more loans to the
11 Committee "using funds derived from the HELOC": a \$34,000 loan on June 6, 2007, and an
12 \$80,000 loan on July 10, 2007, for a total of \$179,000. Resp. at 2. The \$34,000 and \$80,000
13 draws from the HELOC were misreported on the Committee's disclosure reports as loans from
14 Broun's personal funds rather than as loans from a bank-issued line of credit.⁵ See, e.g., 2007
15 July Quarterly at 32 (filed Jul. 5, 2007); 2007 October Quarterly at 32 (filed Oct. 15, 2007).

16 On June 26, 2012, after the filing of the Complaint and the Response, the Committee
17 amended its 2007 July Quarterly Report and 2007 30-Day Post-Runoff Report to reflect the
18 receipt of three HELOC loans and related disbursements. Specifically, the Committee disclosed

⁴ Broun was the sole signatory on the HELOC. See Resp., Ex. B.

⁵ In 2007, the Commission's Reports Analysis Division ("RAD") sought clarification as to the source of Broun's loans to the Committee. On July 20, 2007, RAD sent a Request for Additional Information ("RFAI") to the Committee, requesting more information on loans totaling \$129,000 that the Committee disclosed on its 2007 July Quarterly Report. In the RFAI RAD also noted that the 2007 July Quarterly Report filed by the Committee should have been the 12 Day Pre-Runoff Report (May 31, 2007 – Jun. 30, 2007). On September 4, 2007, RAD sent another RFAI seeking information as to the amount and original source of loans totaling \$209,000 that the Committee disclosed on its 2007 30-Day Post-Runoff Report. In response to these RFAs, in 2007, the Committee amended its disclosure reports and misidentified the second and third draws from the HELOC as loans sourced from personal funds, but did not report the first draw or the \$65,000 disbursement.

1 the receipt of the \$65,000 as a loan from Broun derived from the HELOC and the disbursement
2 to Broun for partial payment on an earlier \$80,000 loan from his personal funds. The Committee
3 also changed the loan source for the \$34,000 and \$80,000 loans from Broun's personal funds to a
4 bank loan from Athens First Bank & Trust. The Committee also amended its Schedule Cs for its
5 2007 October Quarterly Report, 2007 Year-End Report, and 2008 April Quarterly Report to
6 reflect Broun as the source of loans for those loans he made to the Committee from his personal
7 funds and to reflect payments to Broun on the \$65,000 loan.

8 The chart below provides an overview of the reporting of the three HELOC loans:

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Loan Amount	Date Incurred	Original Disclosure	Amended Disclosure
\$65,000	6/4/07	Not Reported	<p>Amended 2007 July Quarterly (filed 6/26/12)</p> <ul style="list-style-type: none"> Sch. A correctly disclosed the loan receipt Sch. C: added \$65,000 HELOC loan, 0.00% interest rate⁶ Sch. C-1: added, \$65,000 HELOC loan 5.99% interest rate <p>Additional Amendments⁷</p>
\$34,000	6/6/07	<p>Amended 2007 July Quarterly (filed 11/09/07)</p> <ul style="list-style-type: none"> Sch. A incorrectly identified the source as personal funds Required Sch. C not filed 	<p>Amended 2007 July Quarterly (filed 6/26/12)</p> <ul style="list-style-type: none"> Sch. A correctly disclosed the loan receipt Sch. C added \$34,000 HELOC loan, 0.00% interest rate (see n. 6) Sch. C-1 added \$34,000 HELOC loan, 5.99% interest rate
\$80,000	7/10/07	<p>Amended 2007 30-Day Post-Runoff (filed 11/09/07)</p> <ul style="list-style-type: none"> Sch. A incorrectly identified the source as personal funds Required Sch. C not filed 	<p>Amended 2007 30-Day Post Run-Off (filed 6/26/12)</p> <ul style="list-style-type: none"> Sch. C: added \$80,000 HELOC loan, 0.00% interest rate. (see n. 6). Sch. C-1: added, \$80,000 HELOC loan, 5.99% interest rate.

III. LEGAL ANALYSIS

The Act requires treasurers to file reports of receipts and disbursements. *See* 2 U.S.C. § 434(a)(1); *see also* 11 C.F.R. § 104.1(a). Further, each report shall identify the person who makes a loan to the committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan. 2 U.S.C.

⁶ The Committee disclosed that it made interest payments to Broun; however, its Schedule Cs reflect a 0% interest rate for the three HELOC loans while its Schedule C-1s reflect the 5.99% bank interest rate. *See* Amended 2007 July Quarterly at 43-44 (filed Jun. 26, 2012); Amended 2007 30-Day Post Runoff at 51-53 (filed Jun. 26, 2012). On November 16, 2012, the Committee filed a Form 99 to correct the Schedule Cs, to indicate that the interest rate for this loan was 5.99%. *See* Miscellaneous Report to the FEC (filed Nov. 16, 2012).

⁷ The Schedule C filings for the Amended 2007 Post-Run Off, Amended 2007 October Quarterly, Amended 2007 Year-End Report and the Amended 2008 April Quarterly reports filed on June 26, 2012, also reflect the \$65,000 loan and cumulative payments made on the loan.

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§ 434(b)(3)(E).

Commission regulations provide that committees must “disclose the amount and nature of outstanding debts and obligations” on Schedules C and D. 11 C.F.R. § 104.3(d). When a candidate obtains a loan, including a line of credit on a personal residence, “for use in connection with the candidate’s campaign,” the campaign committee must disclose the transaction on Schedules C and C-1 of FEC Form 3.⁸ See 11 C.F.R. § 104.3(d)(4). The committees must also report loan repayments to candidates. See 11 C.F.R. § 104.9(f). Commission instructions on completing Schedule C further explain that the committee must identify the “[t]he terms of the loan between the candidate and the committee (not the terms between the candidate and the lending institution).” See Instructions for FEC Form 3 and Related Schedules at 15 (Revised February 2009) (“*Form 3 Instructions*”). The campaign committee must therefore report the candidate as the source of the loan; the underlying source of the funds; and the interest rate, if any, of the loan between the candidate and the committee. *Id.* at 14-15. The campaign committee must also disclose the original source of the funds on Schedule C-1 — that is, the lending institution that provided the HELOC to the candidate. 11 C.F.R. § 104.3(d)(4); *Form 3 Instructions* at 16. Also on Schedule C-1, the campaign committee must identify the loan amount and interest rate, as well as the types and value of collateral that secure the loan. 11 C.F.R. § 104.3(d)(4). Committees must continuously report their debts and obligations until they are extinguished. 11 C.F.R. §§ 104.3(d), 104.11.

⁸ Committees must report loans derived from a candidate’s own HELOC only when those funds are used in connection with the campaign. 11 C.F.R. § 104.3(d)(4). A committee is “only required to report repayments to the candidate, and would not report the repayments by the candidate to the lending institution.” Brokerage Loans and Lines of Credit, 67 Fed. Reg. 38,353, 38,356 (June 4, 2002) (explanation and justification).

1 As described above, the Committee failed to properly disclose the three loans that it
2 obtained through Broun's HELOC.⁹ The Committee never reported the first draw from the
3 HELOC, while it incorrectly reported the second and third draws as sourced from Broun's
4 "personal funds." Further, the first HELOC draw of \$65,000 was used to repay a prior loan
5 Broun made to the Committee with his personal funds, but the Committee failed to report the
6 repayment to Broun. *See* 11 C.F.R. § 104.9(f). The Committee did not file a Schedule C-1 and
7 only amended its Schedule Cs after the Complaint was filed in 2012.

8 Although the Committee failed to disclose the receipt of the \$65,000 loan that was
9 funded from the first draw on the HELOC, as well as the simultaneous disbursement to Broun to
10 settle his \$65,000 personal loan, and the Committee misreported the source of the \$34,000 and
11 \$80,000 loans that were funded with the second and third draws on the HELOC, these alleged
12 reporting violations occurred more than five years ago and thus are outside the five-year statute
13 of limitations period. *See* 28 U.S.C. § 2462; *see also* *FEC v. Nat'l Repub. Senatorial Comm.*,
14 877 F. Supp. 15, 19 (D.D.C. 1995). However, the Committee had an obligation to report the
15 loans until they were fully paid, and the Committee misreported \$102,500 in loans on its 2009
16 and 2010 disclosure reports through May 28, 2010. *See* 11 C.F.R. § 104.3(d), 104.11. These
17 alleged reporting violations still are within the statute of limitations. Nonetheless, we do not
18 recommend the Commission pursue those potential violations because the original activity that
19 gave rise to the 2009 and 2010 reporting violations fell outside the five-year statute of limitations
20 within approximately two months of the Complaint being filed, the Committee has substantially

⁹ Two other loans included in the Complaint's allegations (a \$10,000 loan on May 24, 2007, and a \$100,000 loan on April 14, 2008), and an additional \$5,000 loan the Committee obtained on January 1, 2007, appear to have been correctly reported by the Committee as loans from Broun's personal funds. There is no information available to indicate that these loans were obtained through Broun's HELOC.

- 1 corrected the record, and there are no other violations at issue in this matter.¹⁰ Accordingly, we
2 recommend that the Commission dismiss the allegations that the Committee violated 2 U.S.C.
3 § 434(b) and 11 C.F.R. § 104.3(d)(4) by failing to accurately report loans and disbursements.¹¹

¹⁰ Other matters where the Commission pursued the misreporting of candidate bank loans also involved other violations of the Act and the statute of limitations was not in issue. See Conciliation Agreement IV, MUR 6134 (Cranley for Congress) (misreporting of bank loan; accepting excessive contributions; misstating cash on hand, receipts and disbursements; failing to identify occupation/employer information for contributors; failing to report or disclose earmarked contributions; failing to disclose information regarding disbursement; failing to itemize debts and obligation; and failing to adequately disclose a line of credit); Conciliation Agreement V, MUR 5496 (Huffman for Congress) (misreporting of bank loan and accepting an excessive contribution in the name of another); Conciliation Agreement V, MURs 5422 and 5680 (Texans for Henry Cuellar) (misreporting of bank loan and failing to report a \$100,000 operating expenditure to a vendor).

In two other matters, the Commission did not pursue the misreporting of candidate bank loans. In MUR 5198 (Cantwell), the Commission found reason to believe that the Cantwell Committee did not timely report the bank loan information for two loans totaling \$4.6 million but did not seek a civil penalty because the complaint's core allegations concerning the allegedly improper bank loans were unfounded, the reporting violations appeared inadvertent and the Committee took prompt corrective action and filed an amended report before the complaint was filed. The Commission, however, sent a letter of admonishment to the respondent. First Gen. Counsel's Rpt. at 15-16, MUR 5198 (Cantwell). In MUR 6386 (Steve Fincher for Congress), OGC recommended reason to believe and a civil penalty for the misreporting of the source of loans totaling \$250,000 but the Commission split evenly on the matter. The Commission issued two Statements describing their respective positions See Statement of Reasons, Comm'rs Bauerly, Walther & Weintraub, MUR 6386 (Fincher); Statement of Reasons, Comm'rs Hunter, McGahn & Petersen, MUR 6386 (Fincher). In MUR 6386, the amount in violation (\$250,000) was more than twice the still viable amount in violation in this matter (\$102,500), and the core reporting violation was still within the statute of limitations.

¹¹ Although the Complaint cites the CREW Report on House members' "use [of] their official position to financially benefit themselves," the Complaint does not even obliquely allege that Broun violated the Act's personal use prohibition. Compl. at 4. Therefore, we do not make any recommendations as to any potential issues. We note, however, that the Committee repaid Broun much of the interest that he paid to the bank related to the HELOC draws (5.99%), but the Committee did not disclose on its Schedule C filings that Broun was, in turn, charging the Committee the same interest rate. Rather, the Committee reported 0.00% APR on its Schedule C filings for the HELOC-sourced loans that Broun made to the Committee, thereby indicating that he was not charging the Committee interest. As indicated above, *see supra* n.6, the Committee later corrected this statement to indicate that Broun indeed was charging the Committee 5.99% interest on loans, but this correction was done after the Committee had already repaid the interest to Broun. In Advisory Op. 1991-09 at 3 (Hoagland), the Commission stated that "the failure to disclose any interest rate for the loans and the indication that the interest was not even applicable would foreclose the retroactive application of interest for such loans. Such retroactive interest payments would represent a conversion of excess funds to personal use." The Commission concluded that Hoagland could not recover interest payments paid to the bank because the Committee did not report those interest payments either as new loans from Hoagland or as debts owed to Hoagland by the Committee. *Id.* at 4. Pursuant to the principles of AO 1991-09, the interest payments to Broun could be viewed as retroactive interest payments, therefore raising a potential personal use issue. However, unlike the Hoagland situation, Broun's payments of interest to the bank were reported on the Committee's Schedule D as loan interest debts owed by the Committee. *See supra* n.2. Also, Broun derived no benefit from the Committee's interest payments because they offset amounts he paid to the bank and, in fact, Broun paid more interest to the bank than was reimbursed by the Committee. Respondents contend that Broun actually "paid the lending bank a total of \$36,260.49 in accrued interest on the HELOCs" and thus assert that Broun was not fully repaid by the campaign for the total amount of interest that accrued. Resp. at 3; *id.* et Exs. A, B. Thus, even if

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1 *See Heckler v. Chaney*, 470 U.S. 821 (1985). Further, we recommend that the Commission
2 authorize a cautionary notification in the closing letter to the Committee regarding the Act's
3 reporting requirements for disclosing loans. Finally, because Paul Broun has no personal
4 liability for the reporting violations, we recommend that the Commission find no reason to
5 believe that Paul Broun violated the Act and close the file.

6 **IV. RECOMMENDATIONS**

- 7 1. Dismiss the allegations that the Paul Broun Committee, and Paul Kilgore in his
8 official capacity as treasurer violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d)(4)
9 by failing to accurately report loans and disbursements;
10
11 2. Find no reason to believe that Paul Broun violated 2 U.S.C. § 434(b) and 11 C.F.R.
12 § 104.3(d)(4);
13
14 3. Approve the attached Factual and Legal Analysis;
15
16 4. Approve the appropriate letters, including a letter of caution to the Paul Broun
17 Committee, and Paul Kilgore in his official capacity as treasurer; and
18

the Complaint had alleged that the interest payments resulted in Broun's personal use of campaign funds, we would not recommend that the Commission pursue this potential issue.

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5. Close the file.

Date

1-15-14

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